

**MARKET CONDUCT EXAMINATION REPORT**

**AS OF DECEMBER 31, 1997**

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**FIRST AMERICAN TITLE INSURANCE COMPANY**

**114 EAST FIFTH STREET  
SANTA ANA, CALIFORNIA 92701**

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**Exam Location**

**602 PARK POINT DRIVE, SUITE 270  
GOLDEN, COLORADO 80401-9368**

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EXAMINATION REPORT  
as of  
December 31, 1997**

**Prepared by  
Duane G. Rogers, Esq.  
&  
J. Reuben Hamlin, Esq.**

## **Independent Contract Examiners**

September 30, 1999

The Honorable William J. Kirven III  
Commissioner of Insurance  
State of Colorado  
1560 Broadway Suite 850  
Denver, Colorado 80202

Commissioner:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected general business, rating, underwriting and claims practices of the title insurance business of First American Title Insurance Company has been conducted. The Company's records were examined at its Colorado Regional Headquarters located at 602 Park Point Drive, Suite 270, Golden, Colorado 80401.

The examination covered a one-year period from January 1, 1997 to December 31, 1997.

A report of the examination First American Title Insurance Company is herein respectfully submitted.

Duane G. Rogers, Esq. &  
J. Reuben Hamlin, Esq.  
Independent Market Conduct Examiners

**MARKET CONDUCT  
EXAMINATION REPORT  
OF  
FIRST AMERICAN TITLE INSURANCE COMPANY**

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## **COMPANY PROFILE**

First American Title Insurance Company (the “Company”), a wholly owned subsidiary of the First American Financial Corporation (the “Parent”), is licensed to conduct title insurance business in 47 states and the District of Columbia.<sup>1</sup> The Company is also licensed to conduct title insurance business in Australia, the Bahama Islands, Bermuda, Canada, Guam, Ireland, Mexico, Puerto Rico, the United Kingdom, and the U.S. Virgin Islands. The Company is currently authorized to write title insurance coverage in Colorado and was first licensed in this state on February 18, 1971.

The Company is the anchor of a diversified enterprise of companies providing real estate related financial and information services. Moreover, the Parent is the nation’s largest provider of real estate-related financial and information services. Among other products and service, the First American companies provide title insurance, equity loan services, mortgage, consumer and business credit reporting, property data reporting, title plant database products, property appraisal services, document preparation, loan origination software systems, and homebuyer warranties.

The Company is one of the nations largest title insurance underwriters. In 1997 the Company issued more than 2 million title policies, reports, and guarantees through an agency force consisting of more than 4,000 affiliated and independent agents. In 1997 the Company received an “A” (Excellent) rating from A.M. Best which was the first “A” rating ever assigned to a title company by A.M. Best.

As of December 31, 1997, the Company reported \$43,123,269 in direct premiums in Colorado representing 26% of the total Colorado title insurance market.<sup>2</sup> In 1997 the Company had 34 independent agents operating in different locations throughout Colorado. All premiums were written through these 34 independent agents, as the Company did not have any direct operations in Colorado during 1997.

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<sup>1</sup> The Company is not licensed to conduct title insurance business in Iowa, Kansas, and New York.

<sup>2</sup> Figure representing direct premium written provided by the Company as reported in its Form 9 of its annual statement. Figure representing market share provided by the American Land Title Association (ALTA) National Headquarters, Washington, D.C.

## **PURPOSE AND SCOPE OF EXAMINATION**

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed to assist the Colorado Commissioner of Insurance to meet certain statutory charges by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the Colorado Division of Insurance based on the National Association of Insurance Commissioners Model Procedures. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company and its agents. The examination covers one calendar year of the Company's operations, from January 1, 1997 to December 31, 1997.

File sampling was based on review of systematically selected samples of underwriting and claims files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

An error tolerance level of plus or minus \$10.00 was allowed in most cases where monetary values were involved, however, in cases where monetary values were generated by computer or system procedure a \$0 tolerance level was applied in order to identify possible system errors. Additionally, a \$0 tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

This report contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following seven Company operations:

1. Advertising
2. Complaint Handling.
3. Agent Licensing.
4. Underwriting Practices.
5. Rate Application.
6. Claims Settlement Practices.
7. Financial Reporting

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse nor discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations which do not reference specific insurance laws, regulations, or bulletins are presented to encourage improvement of company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.



## **EXAMINATION REPORT SUMMARY**

The examination resulted in a total of eighteen (18) issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations concerning all title insurers authorized to transact title insurance business in Colorado. These eighteen (18) issues fell into four of the seven categories of Company operations as follows:

### **Agent Licensing & Appointments:**

In the area of agent licensing and appointments, one compliance issue is addressed in this report. This issue arose from Colorado statutory and regulatory requirements which must be followed by insurers when appointing and authorizing agents to solicit business on the insurer's behalf or otherwise act as representative of the insurer in Colorado. With regard to this issue, it is recommended that the Company review its appointment procedures and amend those procedures to assure future compliance with Colorado law.

### **Underwriting Practices:**

In the area of underwriting, six (6) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado. The incidence of noncompliance in the area of underwriting exhibits a frequency range between 2% and 97%. With regard to these underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all six (6) issues.

### **Rating:**

In the area of rating, five (5) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado and whenever title insurers or the insurer's agents conduct real estate or loan closing and/or settlement service for Colorado consumers. The incidence of noncompliance in the area of rating demonstrates a frequency range between 16% and 82%. With regard to the five (5) compliance issues addressed in relation to the Company's rating practices, it is recommended that the Company review its rating manuals and procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three issues.

### **Claims Practices:**

In the area of claim practices, three (3) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claims checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the area of claims practices shows a frequency range of error between 14 % and 50 %. Concerning the three (3) compliance issues surrounding Company claims practices,

it is recommended that the Company review its claims handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three (3) issues.

**Special Financial Reporting Requirements:**

In the area of financial reporting, three (3) compliance issue are addressed in this report. These issues arose from specific Colorado statutory and regulatory requirements requiring title insurers to file certain financial data and to provide annual statistical justification and data to support title insurance rates used in Colorado. With regard these compliance issues, it is recommended that the Company review its annual filing procedures and make the necessary changes to assure future compliance with applicable statutes and regulations.

**FIRST AMERICAN TITLE INSURANCE COMPANY**

**Pertinent Factual Findings**

**PERTINENT FACTUAL FINDINGS**

Relating to

**AGENTS LICENSING & APPOINTMENTS**

<b>Issue A: Accepting title risks from producers without making or obtaining the requisite producer appointment.</b>
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Section 10-2-415, C.R.S. provides in pertinent part:

- (2) (a) The insurer shall notify the commissioner of insurance of producer appointments. Each insurer shall keep on file with the commissioner a current list of insurance producers which it has appointed to solicit business on its behalf. The insurer shall file with the commissioner a list of new appointments of insurance producers. The list may be submitted to the commissioner monthly or at such other intervals as the commissioner may prescribe. The insurer shall report all pertinent appointment information as prescribed by the commissioner, including the effective date of appointment.
- (b) Subject to continuation or renewal, each insurance producer appointment shall remain in effect until:
- (I) The insurance producer's license is discontinued or canceled by the insurance producer or revoked by the commissioner; or
  - (II) Notice of termination of the appointment is filed with the commissioner by the insurer.

The Single Producer Act cited above, require insurers to solicit business only through licensed agents and to obtain an appointment for every producer from which the Company accepts a risk.

Review of a list of policies issued by the Company in 1997 demonstrated that, during 1997 the Company conducted title insurance business in Colorado through the use of some 34 independent agents. The examiners compared the list of agents writing business for the Company in 1997 with an agency appointment list provided by the Colorado Division of Insurance. The following is illustrative of the examiners findings:

**AGENCIES WRITING COVERAGE FOR THE COMPANY-1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
34	34	8	24%

A review of the Company's 1997 agency appointments demonstrated that the Company failed to appoint 8 of the 34 (24%) agencies collecting premium and writing title insurance coverage for the Company during 1997.

In addition, an examination of a sample of systematically selected new business policies issued by the Company in 1997 demonstrated that, in some instances, the failed to acquire the

appropriate agent appointment either preceding or following the acceptance of a risk from the given agent.

**TITLE POLICIES ISSUED-1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	5	5%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .11% of all new business title policies issued by the Company in Colorado during 1997, showed 5 instances (5% of the sample) wherein the Company issued policies of title insurance and/or title policy endorsements using unappointed agents.

**Recommendation #1:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-2-415, C.R.S. In the event the Company is unable to provide such documentation the Company should be required to provide evidence demonstrating it has reviewed its procedures regarding the tracking of agent's licensing and appointments and has amended those procedures to assure future compliance with Colorado law.

The Company should also be required to conduct an audit designed to identify all producers the Company accepted risks from in which the Company failed to acquire the appropriate agent appointment either preceding or following the acceptance of the risk from the producer. The scope of the self-audit should be from January 1, 1997 to present. After conducting the self-audit, the Company should be required to remit any unpaid appointment fees as is consistent with the findings of the Company's self-audit.

**PERTINENT FACTUAL FINDINGS**

for

UNDERWRITING

**Issue B: Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of exceptions or exclusions to coverage related to unfilled mechanics or materialman's liens in compliance with Colorado law and Company underwriting procedures.**

Section 10-3-1104(1)(f)(II), C.R.S., defines unfair discrimination as:

Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states in pertinent part:

**VII. CONSUMER PROTECTIONS**

L. Each title entity shall notify in writing every prospective insured in an owner's title insurance policy for a single family residence (including a condominium or townhouse unit) (i) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfilled mechanics or materialman's liens, except when said coverage or insurance is extended to the insured under the terms of the policy. . . [N]othing contained in this Paragraph L shall be deemed to impose any requirement upon any title insurer to provide mechanics or materialman's lien coverage.

In accordance with the regulation cited above, the Company's 1997 underwriting rules required all agents to provide certain insureds with the required notice. Specifically, in 1997 the Company had a disclosure form which provided:

**B. MECHANICS' LIEN PROTECTION**

If you are a buyer of a single family residence, you may request coverage against loss because of unrecorded claims asserted by construction, labor or material suppliers against your home.

If no construction, improvements or major repairs have been undertaken on the property to be purchased within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will be



payment of the appropriate premium and the execution by the seller of an Affidavit and Indemnity form satisfactory to the Company.

If there have been construction, improvements or major repairs undertaken on the property to be purchased, within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and/or the contractor; payment of the appropriate premium; fully executed Indemnity Agreements satisfactory to the Company; and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which you have contracted or agreed to pay.

**NOTHING HEREIN CONTAINED WILL BE DEEMED TO OBLIGATE THE COMPANY TO PROVIDE ANY OF THE COVERAGES REFERRED TO HEREIN UNLESS THE ABOVE CONDITIONS ARE FULLY SATISFIED.**

First American Title Insurance Company, NOTICE TO PROSPECTIVE BUYERS OF SINGLE FAMILY RESIDENCES, (Form C-3 Commitment Notice) (attached to Company Underwriting Memorandum dated January 31, 1990).

The following sample demonstrated that, although the Company offered coverage for unfilled mechanic's and materialman's liens, in some instances the Company failed to make the appropriate written disclosure regarding its general requirements for such coverage when issuing title policies of insurance associated with the title transfer of single family residences, condominiums or townhouses in Colorado:

**TITLE POLICIES ISSUED-1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	72	72%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .11% of all new business title policies issued by the Company in Colorado during

1997, showed 72 instances (72% of the sample) wherein the Company issued title insurance policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. Each policy excepted coverage for unfiled mechanics or materialman's liens, a coverage offered by the Company by endorsement, however, in each instance the Company failed to provide the insured with the requisite written notice regarding the availability and prerequisites of such coverage as required by operation of the Company's underwriting guidelines and 3 CCR 702-3 (3-5-1).

In all 72 reported instances the underwriting and escrow files provided by the Company did not contain evidence that the Company or its agents provided the prospective insured with the requisite written disclosure regarding unfiled mechanic or materialman's liens as required by the Company's underwriting guidelines and Colorado law.

### **Recommendation #2:**

Within 30 days, the Company should demonstrate why it should not be considered in violation of § 10-3-1104(1)(f)(II), C.R.S., and 3 CCR 702-3 (3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company procedures necessary to implement the requisite change so that those procedures and guidelines include a requirement that will assure the Company will provide prospective insureds with written notification of the Company's general requirements for the deletion of the Company's general exception or exclusion to coverage for unfiled mechanic's liens.

In addition, the Company should be required to perform a self audit of all claims denied due, in whole or in part, to the general exception or exclusion contained in the tile policy for unfiled mechanic or materialman's liens. The self audit should cover a period from January 1, 1997 to present. After identifying the target denials, the Company should be required to accept liability for all claims identified by the audit in which the Company failed to provide the requisite written notice.

**Issue C: Misrepresenting the benefits, advantages, conditions and/or terms of title insurance policies through omission of applicable endorsements.**

Sections 10-3-1104(1)(a)(I), C.R.S. defines certain unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; . . .

A review of the following sample demonstrated that, whenever the Company issued a title insurance policy in Colorado during 1997, the Company failed to identify, itemize, or list endorsements to the policy in a declarations page or otherwise include such information within the terms of title insurance policies issued.

**TITLE POLICIES ISSUED-1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	97	97%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .11% of all new business title policies issued by the Company in Colorado during 1997, showed 97 instances (97% of the sample) wherein the Company issued title insurance policies without itemizing, attaching, and/or listing the inclusive endorsements on a policy declaration page or otherwise disclosing such information within the written terms of the policy.

The Company's method of notifying prospective insureds of the endorsements requested by the insured for inclusion the prospective title insurance policy was to include a statement of charges in the lower right hand corner of the respective insured/applicant's original commitment papers. Subsequent updates of those commitment papers did not necessarily continue to list the endorsements and related charges.

Upon issuing the title insurance policy the commitment papers were incorporated into the title policy, however, the Company omitted the listing of inclusive endorsements and itemized premium charges that appeared within the terms of the original commitment papers. A listing of the policy endorsements was not contained in the final policy issued. In addition, the only indication that an endorsement or rider amended a particular policy was that a copy of the endorsement or rider was included in the underwriting file and placed behind the policy. The endorsements were not otherwise "attached" to the policy and the pages of the policy were not

numbered (i.e. 1 of 1) to identify the length of the policy or otherwise identify the existence of any endorsements or riders.

**Recommendation #3:**

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its policy forms and endorsements and underwriting guidelines and procedures and any other requisite Company operations so that all title policies issued by the Company incorporate a listing of any endorsements and/or riders on the policy declaration page or within the terms of the policy as to all future policies issued by the Company.

**Issue D: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.**

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII)(G), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states:

No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.

The following sample demonstrated that, in some instances, the Company or its agents provided closing and/or settlement service in Colorado during 1997 without obtaining the requisite written closing instructions signed by all necessary parties.

**TITLE POLICIES ISSUED-1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	26	26%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .11% of all new business title policies issued by the Company in Colorado during 1997, showed 26 instances (26% of the sample) wherein the Company or its agents provided closing and/or settlement services for Colorado consumers without receiving written closing instructions from all necessary parties.

**Recommendation #4:**

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(G). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company operations necessary to assure that the Company and its agents will obtain written instructions from all necessary parties whenever the Company or its agents perform closing and settlement services in Colorado.

**PERTINENT FACTUAL FINDINGS**

for

RATING

**RATING**

**SECTION 1: Premium Rates**

**Issue E: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify title insurance premium rates.**

Section 10-4-401(3)(b), C.R.S., provides:

Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-4-403(1), C.R.S., provides:

Rates shall not be excessive, inadequate, or unfairly discriminatory.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VI)(K)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.

Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings



must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

The Company's rating manual contained the following regarding employee discounts:

Employee Rate: (Eff. 8/1/88)

A charge of 25% of the Basic Rate Shall be made to employees of the Company, its subsidiaries or affiliated companies (including employees on approved retirement), for policies issued in connection with financing, refinancing, sale or purchase of the employee's bona fide home property. The discount rate for such charges is authorized only in connection with those costs which the employee would be obligated to pay, by established custom, as a party to the transaction.

First American Title Insurance Company, FEES & RULES GOVERNING ISSUANCE OF TITLE COMMITMENTS, POLICIES & ENDORSEMENTS IN THE STATE OF COLORADO, § A Rule A-11 at p. 4 (ed. 8/1/88).

The Company's rating manual contained the following regarding a governmental entity discount:

Governmental Rate – Areas J and P only<sup>3</sup>: (Eff. 5/15/95)

A charge of 50% of the Basic Rate may be charged as to owner's insurance properly paid for by a governmental, federal, state, municipal and/or affiliated agency on a 1-4 family residence.

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<sup>3</sup> Areas J and P are the counties of El Paso and Pueblo respectively.

The term “properly paid for” is construed as meaning the amount paid by the party who would customarily be responsible for payment of such charges.

First American Title Insurance Company, FEES & RULES GOVERNING ISSUANCE OF TITLE COMMITMENTS, POLICIES & ENDORSEMENTS IN THE STATE OF COLORADO, § A Rule A-13 at p. 4 (ed. 5/15/95).

The Company’s rating manual contained the following discount for eleemosynary institutions and churches:

Churches or Charitable Non-Profit Organizations: (Eff. 8/1/88)

A charge of 59% of the Basic Rate may be charged as to owner’s and/or lender’s insurance properly paid for by insured churches, charitable or like eleemosynary non-profit organizations on property dedicated to church or charitable use within the normal activities for which such entities were intended. The Basic Rate, with one discount, applies on policies issued on all other property.

The term “properly paid for” is construed as meaning the amount paid by the party who would customarily be responsible for payment of such charges.

First American Title Insurance Company, FEES & RULES GOVERNING ISSUANCE OF TITLE COMMITMENTS, POLICIES & ENDORSEMENTS IN THE STATE OF COLORADO, § A Rule A-12 at p. 4 (ed. 8/1/88).

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company’s 1997 filing of financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq. Since the Company was unable to produce the 1997 filing, the Company was provided the opportunity to produce a prospective justification of the 1997 rates in accordance with the criteria established under the statutes cited above.

The Company could not provide sufficient justifications for the cited Company rates to satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses provided by the Company did not contain supporting financial data and statistical justification. In addition, the Company’s responses did not address or consider past and prospective loss and expense experience and the responses did not identify or explain how a reasonable profit provision was incorporated into the development of the Company’s title insurance rates.

In addition to the Company rating rules discussed above, a review of statewide rate filings made by the Company and or its Colorado agents, raised certain questions regarding whether the

Company's statewide rating scheme complied with the requirements of Colorado law. Specifically, the examiners questioned whether variances in rate charges among different Colorado counties was unfairly discriminatory under Colorado law or whether the county-by-county rating scheme in the business of title insurance resulted in excessive rates for Colorado consumers purchasing title insurance in high premium counties.

For instance, the Company's rate filings effective in 1997 for Boulder and Denver county resulted in different rates charged in each county. The premium charged for a basic ALTA owner's policy in Denver County during 1997 were \$768.00 on a 100,000 home, or \$7.68 per thousand. Each additional thousand dollars of coverage over and above 100,000 carried an additional premium charge of \$1.85 per thousand.

The premium charges for the same coverage in Boulder County in 1997 were \$580.00 on a 100,000 home, or \$5.80 per thousand. Just as in Denver County, each additional thousand dollars of coverage over and above the 100,000 carried an additional premium charge of \$1.85 per thousand. Considering the significant reduction in premium charges for the first 100,000 in coverage in Boulder County as compared to Denver County, the examiner's questioned the per unit premium charge for coverage over \$100,000. Moreover, the examiners asked the Company to justify and explain why the per unit charge in for coverage in excess of \$100,000 was not reduced in Boulder County commensurate with the reduction for the first \$100,000 in coverage.

In addition, the examiners requested the Company to identify factors supporting an increase in premium charges in Denver as opposed to the lower rates charged in Boulder County. The Company was informed that its response should be a detailed answer describing past and prospective loss and expense experience. The Company was also asked to demonstrate how a reasonable profit provision is incorporated into the Company's premium charges for title coverage, specifically indicating how the Company's investment income offsets the reasonable profit provision.

The examiners requested the Company response consider differences in both premium rate charges and closing and settlement fees and charges between the following five counties:

1. DENVER
2. BOULDER
3. PUEBLO
4. LARIMER
5. EL PASO

The examiners also requested the Company to justify its base rate charges in Adams, Arapahoe, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Kit Carson, Lake, Otero and Sedgwick counties and to explain why there was no variance in premium charges or closing and settlement fees and charges in those 12 counties. The Company was asked to explain, if

other counties in Colorado rationally supported varying rate filings, what the common factor, or factors, were which supported a uniform rate filing for the 11 enumerated counties.

Also regarding questions concerning the Company county-by-county rating scheme, the examiners ask the Company to provide statistical justification and supporting data for specific miscellaneous limited coverage policies issued by the Company insuring matters related to title. The miscellaneous limited coverage policies were as follows:

**Foreclosure Guarantee:**

The Foreclosure Guarantee rate, which only guarantees the accuracy of interests in real property, varies between counties. In 1997, a Foreclosure Guarantee policy for a 1-4 family residential property was \$115 in Boulder County; however, the same policy was \$125.00 in Teller County.

**Title Guarantee:**

The Title Guarantee rate, which only insures the purported interest in land varied between counties. For instance, in 1997 a Title Guarantee policy with a maximum liability of \$50,000 was \$145.00 in Boulder County; however, the same policy was \$200.00 in Archuleta County.

**Mortgage Guarantee:**

The Mortgage Guarantee rate, which only insures the accuracy of interests in land varies between counties. For instance, in 1997 a Title Guarantee policy with liability between \$25,000 and \$50,000 was \$145.00 in Boulder County; however, the same policy was \$200.00 in Archuleta County.

As in the previous instances, the examiners requested the Company to identify factors supporting an increase in premium charges in some counties. Again, the Company was instructed to describe how the rates were developed using past and prospective loss and expense experience. Equally, the Company was asked to demonstrate how a reasonable profit provision was incorporated into the Company's premium charges for these rates and to specifically indicate how and if the Company's investment income offset the reasonable profit provision.

Another county-by-county rating variance concerned a short-term re-issue discount. Specifically, in 1997 the Company allowed a Base Premium discount for title policies ordered within a specified time period of a prior title policy. In some counties, the discount was available for up to five years of the issuance of a prior title policy, while in others it was only available for three or less years. In addition, the discount factor was contingent upon the length of time since the prior policy was issued. In some counties the Company offered a 50% premium discount for up to five years of a the issuance of a prior title policy while the same discount was only available for two years in other counties.

Once again, the examiners requested the Company to justify the disparate treatment among counties. Consistent with prior requests, the Company was instructed to describe how the rates were developed using past and prospective loss and expense experience. Equally, the Company was asked to demonstrate how a reasonable profit provision was incorporated into the Company's premium charges for these rates and to specifically indicate how and if the Company's investment income offset the reasonable profit provision.

Finally, regarding the Company's county-by-county rating scheme, the examiners questioned whether the Company could justify a variance in premium charges for concurrent lender's policies issued in different counties. Specially, the Company's 1997 rating manual provided a discount for lender's policies issued in coordination with an accompanying owner's or lender's title policy. This discount, however, varied between counties. The rule provided:

When concurrent with owners or lender's insurance on the same estate in land issued at full value: (See base rates for effective dates)

- |     |                               |
|-----|-------------------------------|
| (1) | Areas A, C and D:             |
|     | \$85.00                       |
| (2) | Areas F, J, L, M AND N:       |
|     | \$75.00                       |
| (3) | Areas B, E, G, K, S, T and U: |
|     | \$70.00                       |

(4) Areas H, I, O, P, Q, R, V, W and X:

\$60.00

First American Title Insurance Company, FEES & RULES GOVERNING ISSUANCE OF TITLE COMMITMENTS, POLICIES & ENDORSEMENTS IN THE STATE OF COLORADO, § C Rule C-1(b) at p. 11 (ed. 8/1/88).

Consistent with inquiries made into other county-by-county rate filings, the examiners requested the Company to provide for statistical and financial justification for the county-by-county variance in the Company's concurrent lender's policy rate. In addition, just as in previous cases, pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1997 filing of financial and statistical data to demonstrate the county-by-county rate fluctuations were not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq. Since the Company was unable to produce the 1997 filing, the Company was provided the opportunity to produce a prospective justification of the rates in accordance with the criteria established under the statutes cited above.

As in all previous cases, the Company's responses did not provide sufficient justification of the Company's county-by-county rate differentials to satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain supporting financial data and were not statistically justified. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the rates and closing and settlement fees and charges.

**Recommendation #5:**

Within 30 days, the Company should demonstrate why it should not be considered in violation of § 10-4-403(1), C.R.S., and 3 CCR 702-3 (3-5-1)(VI)(A), (B) and (K) as applicable to the findings addressed in the text above. In the event the Company is unable to provide such documentation, it should be required to provide the Colorado Division of Insurance with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited Company premium rates and closing and settlement fees and charges. The filing should specifically identify and explain how a reasonable profit provision is incorporated into the development of the Company's title insurance premium rates.

<b>Issue F: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.</b>
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Section 10-4-401(3)(b), C.R.S. provides:

Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f)(II), C.R.S., defines unfair discrimination as:

Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .

. . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same

county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .

. . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .

. . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

The following sample demonstrated that, during 1997, the Company failed to utilize rates on file with the Colorado Division of Insurance when issuing policies of insurance:

**TITLE POLICIES ISSUED-1997**



<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	82	82%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .11% of all new business title policies issued by the Company in Colorado during 1997, showed 82 instances (82% of the sample) wherein the Company issued title insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates in file with the Colorado Division of Insurance when issuing policies of insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular error regardless of the total errors contained in the file. Thus, the error frequency reported above was 82%, however the 100 files reviewed contained a total of 145 premium rating errors.

The following chart contains a breakdown of the finding by coverage:

<b>Type of Coverage</b>	<b>Number of Errors</b>	<b>% to Sample (file errors)</b>	<b>Range of Errors</b>
<b>Owner's</b>	37 errors (37 files)	37%	<b>Over:</b> \$27.00 to \$782.00 (8 errors) <b>Under:</b> \$26.95 to \$952.00 (29 errors)
<b>Lender's</b>	57 errors (57 files)	57%	<b>Over:</b> \$1.00 to \$701.00 (30 errors) <b>Under:</b> \$4.00 to \$450.00 (27 errors)
<b>Endorsements</b>	42 errors (26 files)	43%	<b>Over:</b> \$1.00 to \$19.90 (29 errors) <b>Under:</b> \$1.00 to \$78.20 (13 errors)
<b>Guaranty Policies</b>	9 errors (9 files)	9%	<b>Over:</b> (no overcharges) <b>Under:</b> \$5.00 to \$60.00 (9 errors)
<b>Total</b>	<b>145 errors*</b> <b>(62 files)</b>	<b>62%*</b>	<b>Over:</b> \$1.00 to 782.00 (69 errors) <b>Under:</b> \$1.00 to \$952.00 (78 errors)

\* Totals for files and percentages consider counting a file with multiple errors as a single exception.

As shown above, the premium calculation errors in these 82 files resulted in premium overcharges ranging between \$1.00 and \$782.00 and premium undercharges ranging between \$1.00 and \$952.00.

**Recommendation #6:**

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to demonstrate that it has reviewed its procedures relating to the filing of rates and rating rules and has implemented procedures which will assure future compliance with the filing requirements of the Colorado Division of Insurance.

The Company should also be required to provide assurances that all future policies will be issued in accordance with filed company rates and all premium charges will accurately reflect rates on file with the Colorado Division of Insurance. In addition, the Company should also be required to provide assurances that all future closings services will be provided in accordance with the appropriate filed closing and settlement fee schedule and all such charges will accurately reflect rates on file with the Colorado Division of Insurance.

The Company should also be required to perform a self-audit from January 1, 1997 to present and return any excess monies collected as determined by the self-audit. The self-audit of premium rating errors should be conducted in accordance with self-audit guidelines promulgated by the Colorado Division of Insurance.

**Issue G: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.**

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

**B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES**

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.
2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:
  - b. The application for each policy, if any;

- c. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and
- d. Other information necessary for reconstruction of the rating and underwriting of the policy.

**TITLE POLICIES ISSUED - 1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	16	16%

An examination of 100 systematically selected underwriting/rating files, representing 0.11% of all title policies written by the company in Colorado during 1997, showed 16 instances (16% of the sample) wherein the Company failed to adequately document underwriting/rating files sufficient to allow the examiners to determine compliance with Colorado law.

Eleven (11) of the 16 reported files were not sufficiently documented to allow the examiners to reconstruct of premium rates charged and/or to determine whether the Company was in compliance with or followed its own underwriting standards when applying certain rate discounts.

Five (5) of the 16 files reported here concerned documentation issues surrounding basic record keeping and policy tracking. Specifically, the examiners requested the Company to produce a list comprised of a population of all policies issued by the Company in Colorado during 1997. Five (5) of the sample of 100 files selected by the examiners from that population were files handled in prior years (one contained a commitment issued as early as 1993). The examiners requested the Company to explain why policies with effective dates outside the scope of 1997 were included within a list of policies issued in 1997.

The Company explained that it relied on its agents to produce a list of policies issued by the Company in Colorado during 1997 as the Company did not maintain an independent or separate listing of policies it issues in Colorado. Furthermore, according to the Company the errors in the list occurred because, although the agents collected premiums for these five policies prior to 1997, premium was never remitted to the Company until 1997. Therefore, despite the effective date of the policy reviewed, the Company did not have a record of the policy or knowledge that the policy was issued until the Company received premium for the policy.

**Recommendation #7:**

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance to ensure future compliance with the regulation.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its record keeping and file maintenance practices and implemented procedures which will assure underwriting files will be maintained so each file contains declaration pages, endorsements, riders, guidelines or manuals associated with or used for the rating or underwriting title policies, and any other information necessary for reconstruction of the rating and underwriting of the policy.

**RATING**

**SECTION 2: Settlement & Closing Fees**

**Issue H: Using closing and settlement service fees and charges not on file with the Colorado Division of Insurance and/or misapplication of filed schedule of closing and settlement services fees and charges.**

Section 10-4-403(1), C.R.S. provides:

Rates shall not be excessive, inadequate, or unfairly discriminatory.

Additionally, Section 10-3-1104(1)(f)(II), C.R.S., defines unfair discrimination as:

Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

**IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES**

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .

. . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .

**. . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES**

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .

. . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses



### **TITLE POLICIES ISSUED-1998**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
89,671	100	66	66%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .11% of all new business title policies issued by the Company in Colorado during 1997, showed 66 instances (66% of the sample) wherein the Company conducted real estate closing and settlement services in coordination with the issuance of title insurance policies and collected fees and charges for the closing and settlement services which deviated from the Company's closing and settlement services fee schedule filed with the Colorado Division of Insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular error regardless of the total errors contained in the file. Thus, the error frequency reported above was 95%, however the 100 files reviewed contained a total of 176 closing and settlement rating errors. All rating errors fell into specific sub-categories of closing and settlement fees and charges as discussed and outlined below.

### **OVERCHARGES FOR MISCELLANEOUS FEES ASSOCIATED WITH CLOSINGS PERFORMED BY THE COMPANY'S AGENT**

#### **Misapplication of Express Fee Charges**

In thirty-nine (39) of the 66 reported files (39% of the sample), the Company's agents collected monies from insureds for express mail and/or courier charges for mailing that were to be conducted in coordination with the real estate and/or loan closing. In all 39 instances the mailings were either never performed, or the actual charges incurred for the mailings were different than the amount billed or collected by the agency. Since the actual charges incurred in relation to these mailing charges were not itemized in most files reported here, a meaningful range of error is not discernable.

#### **Tax Certificate Charges**

Forty-three (43) of the 66 reported files (43% of the sample) contained overcharges related to tax certificates obtained by Company agents on behalf of insureds in conjunction with closing services performed by the Company agent. Specifically, a review of 100 underwriting files demonstrated that, in 1997, Company agents had a practice of charging a flat rate for tax certificates obtained in conjunction closings services regardless of the actual cost incurred in obtaining the tax certificate. The practice of charging a flat rate for tax certificates (flat rate fees ranged between \$15.00 and \$20.00) generally resulted in Company agents charging excess funds for tax certificates obtained by the agency. Since the Company failed to file any flat rate for tax certificates with the Colorado Division of Insurance, any monies collected in excess of

the actual cost of obtaining the tax certificates resulted in the collection of an unfiled fee and application of an unfiled rate. The 43 errors resulted in overcharges ranging between \$2.00 and \$30.00.

### **Overcharges & Miscalculation of Recording Fees**

Twenty-two (22) of the 66 reported files (20% of the sample) contained overcharges and miscalculations of charges made by Company agents to cover the costs of recording and/or filing documents incidental to the conveyance of real property. Such recorded documents include mortgages, deeds of trust, assignments, powers of attorney, warranty deeds and releases. As in the case of express mail charges, many of the overcharges resulted from Company agents charging flat rates for recording a particular document. Since the Company failed to file any flat rate for recording or filing such documents, any monies collected in excess of the actual cost of recording or filing the specific document resulted in the collection of unfiled fees and application or use of unfiled rates. The 22 errors resulted in overcharges ranging between \$9.00 and \$50.00 and an undercharge of \$10.00.

### **Overcharges of Miscellaneous Fees Associated with Closings**

Sixteen (16) of the 66 reported files (16% of the sample) contained overcharges made by Company agents for miscellaneous expenses incurred in conducting closings. Such expenses included wire fees, document preparation charges, and cashier's check charges. As in the case of express mail and recording charges discussed above, many of the overcharges resulted from Company agents charging flat rates to defray the costs of such services. Since the Company or its agents failed to file any flat rates to cover these miscellaneous expenses, all monies collected in excess of the actual cost of performing or obtaining such goods or services resulted in the collection of unfiled fees and application or use of unfiled rates. Since the actual charges incurred in relation to these fees were not filed, no range of error is discernable.

### **OVERCHARGES & MISCALCULATIONS OF CLOSING FEES**

Fifty six (56) of the 66 reported files (56% of the sample) contained rating errors<sup>4</sup> in which the Company agents deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services, filed with the Colorado Division of Insurance. Specifically, the files contained rating errors in which Company agents made charges for basic closing fees that deviated from the Company or its agent's filed fee schedule. The 56 errors

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<sup>4</sup> Many of the 56 files reported here contained rating errors regarding closing fees for both the real estate and lender closing transaction. Where multiple closing fee errors occurred within a file, the file was only reported as a single error.

resulted in overcharges ranging between \$17.50 and \$265.00<sup>5</sup> and undercharges ranging between \$10.00 and \$150.00.<sup>6</sup>

**Recommendation #8:**

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to demonstrate that it has reviewed its procedures relating to the filing of rates and rating rules and has implemented procedures which will assure future compliance with the filing requirements of the Colorado Division of Insurance.

The Company should also be required to provide the Division of Insurance with written assurances that all future closing services will be provided in accordance with the appropriate filed closing and settlement fee schedule and all such charges will accurately reflect rates on file with the Colorado Division of Insurance.

Finally, The Company should be required to address certain individual rating issues presented in this report as identified below:

Regarding overcharges in filed closing fees, the Company should be required to perform a self audit from January 1, 1997 to present and return any excess monies collected as determined by the self audit.

The Company should also be required to either adopt and implement procedures which will assure that the Company's agents will only bill for the actual amount of the goods or services used or procured in the closing transaction, or the Company should be required amend its filed fee schedule to include rules which supports its agents' practices of charging monies in excess of the actual costs incurred or waiving such charges where such charges are incurred.<sup>7</sup> In any event, the Company should be required to provide the Colorado Division of Insurance with

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<sup>5</sup> One policy reviewed demonstrated a \$345.00 overcharge for both the real estate and lender's closings. The charges, however, were not itemized in the file so the examiners could not ascertain the overcharge per closing.

<sup>6</sup> The range of error reported here is based on the miscalculation or misapplication of a single closing fee, either real estate or lender. The range does not represent the total monetary error contained in a file with multiple closing fee errors.

<sup>7</sup> Any fee filing made by a title insurance agency is subject to §10-4-401 et seq., and may not be excessive, inadequate, or unfairly discriminatory. In addition, a fee schedule waiver rule may conflict with 3 CCR 702-3 (3-5-1)(VI)(B)(8) which prohibits title insurance entities from:

8. Waiving, or offering to waive, all or any part of the title entity's established fee or charge for services which are not the subject of rates filed with the Commissioner.

A scheduled fee waiver rule that provides for the waiver or nominal amounts and is applied consistently and in a nondiscriminatory fashion may comport with the intent of the regulation.

written assurances that Company agents will not charge any miscellaneous closing fee or expense unless such charge is actually incurred and, whenever charges are collected up-front, excess money will be refunded when the services are not subsequently performed.

**PERTINENT FACTUAL FINDINGS**

Relating to

**CLAIMS PRACTICES**

<b>Issue I: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.</b>
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Section 10-3-1104(1)(h)(III), C.R.S., defines an unfair claims settlement practice as:

Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

**Failure to Adopt Reasonable Standards for the Prompt Investigation of Claims**

Although the Company possessed a claims manual in 1997, the manual was primarily concerned with reserve tracking and data processing. The manual contains the following rule regarding initial responses to notice of a claim:

**.17 Date and Manner of the First Notice**

Select one of the following descriptions: Acceptance, Acceptance with a Reservation of Rights, Investigating, Denial. If “Investigating” is checked, be certain to report the final outcome (acceptance, denial, etc.) by entering a status update into the LCMS.

First American Title Insurance Company, CLAIMS MANUAL FOR LOCAL CLAIMS MANAGEMENT SYSTEM OFFICES, § 703.17 The Claim Report Form at page 10 (ed. 11/95).

The failure of a the Company to adopt a reasonable standard for acknowledgment of a claim, combined with the absence of a requirement for a reasonable, prompt response to communications regarding claims arising under title insurance policies issued by the Company does not comply with the statute cited above.

Furthermore, the manual contains the following rule regarding updating and documenting the diary of adjuster notes:

**.02 Entering Status Updates Into LCMS**

Status updates must be entered into the LCMS periodically. The system has been designed to monitor the entry of status updates, as follows:

**A. Claims \$25,000 and over:**

Status updates must be entered every three months.

**B. Claims under \$25,000:**

Status updates must be entered every six months.

Please refer to the LCMS User Reference Manual for further information regarding this procedure.

First American Title Insurance Company, CLAIMS MANUAL FOR LOCAL CLAIMS MANAGEMENT SYSTEM OFFICES, § 706.02, Claim Status Reporting at page 21 (ed. 11/95).

The three and sixth month diary updates described in the Company claim manual and cited above are not reasonable as described by the statute.

### **Failure to Adopt Reasonable Standards to Address Agencies Adjusting Claims**

An examination of the Company's 1997 claims manuals, memorandum, written procedures and 50 systematically selected claims files demonstrated that, in some instances, the Company delegated the authority to adjust claims to Company agents and, in some cases, pay claims submitted under title insurance policies issued by the Company. Further review of the material demonstrated that claims handled solely by Company agents in Colorado during 1997 were not monitored, tracked, or otherwise acknowledged by the Company.

Based on the above, the examiners requested the Company to provide the following information for examiners to review for each of the 34 agencies writing business for the Company during 1997:

1. A list of all claims (or inquiries regarding coverage) submitted to your agency during 1997 which were not reported, submitted or otherwise turned over to or paid or denied by the Company or a Company claims agent/adjuster. Your list should be comprised of both claims paid and denied by your agency;
2. Copies of any manuals, memorandums, directives, procedures, letters, guidelines or any materials used by your agency to handle claims (inquiries);
3. Indicate whether your agency has an employee or employees specifically designated to handle claims. In addition, please indicate the amount of employee hours allocated by your agency to handle claims (inquiries).

Of the 34 agencies soliciting business on behalf of the Company in 1997, four agencies confirmed they processed claims on the Company's behalf.

One of the agencies responded:

In 1997 we did not maintain a log or any records concerning those few claims we handled ourselves. If we received a simple claim that was based on a mistake we had made in our operations, we simply separated that file from our back-files and flagged until such time that we had resolved the problem typically by obtaining a corrective deed or some such.

We have no manuals, memorandums, directives, procedures, letters, guidelines or any other material specifically written by our agency on how to handle claims.

Although a Title insurer may delegate the authority to adjust claims, delegation of that authority does not relieve an insurer from its statutory charge of adopting and implementing reasonable procedures to assure the prompt investigation of claims. The other three agencies were all affiliated under a parent company. The response was provided by the parent on behalf of all three agencies and stated:

. . . If a potential claim issue can be resolved to the satisfaction of the insured within the agency deductible of \$500.00, the agency may take steps to satisfy the insured directly . . .

The agencies' representative/parent company attached a copy of the agencies' claims handling procedures. The procedures did not set forth any standards regarding the prompt investigation of claims and the manual did not contain any rules requiring agents to notify the Company of claims received and adjusted by the agency.

### **Failure to Implement Company Standards for The Prompt Investigation of Claims**

The Company's underwriting agreement contains the following clause designed to facilitate prompt investigation of claims arising under title insurance policies issued by the Company:

#### **CLAIMS AND LOSS PROVISIONS**

Each of the parties agrees to notify the other immediately in writing of any claim or loss under any policy issued hereunder, howsoever such claim may come to its attention, which may result in the assertion of a claim or loss



under any such policy, or the commencement of any litigation which might result in any such claim or loss. . . . Such notice shall be as prompt as possible. . .

First American Title Insurance Company, UNDERWRITING AGREEMENT, § 4. Clause 4.1, Claims and Loss Provisions at page 7 (ed. 1997).

**TITLE CLAIMS SUBMITTED - 1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
222	50	24	48%

An examination of 50 systematically selected claims files, representing 23% of all claims submitted to the company in Colorado during 1997, showed 24 instances (48% of the sample) wherein the Company failed to implement reasonable standards for the prompt investigation of claims arising under insurance policies. The errors reported here were as follows:

Three (3) of the 24 instances reported in the sample above were claims that were initially received and adjusted by Company agents. In each instance the agent failed to comply with the Company's underwriting agreement and provide notice of the claim to the Company , thereby failing to implement a Company standard for the prompt investigation of a claim.

In 21 of the 24 reported instances the Company adjuster failed to review or diary open claims files and failed to review claim files at the three and six month intervals described by the Company claims handling rule cited above.

**Recommendation #9:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(III). In the event the Company is unable to show such proof, it should provide evidence that it has reviewed all Company rules, manuals and procedures relating to the investigation and handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all claims will be paid and investigated in accordance with Colorado Insurance Laws.

**Issue J: Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.**

Section 10-3-1104(1)(h)(II), C.R.S., defines an unfair claims settlement practice as:

Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

**TITLE CLAIMS SUBMITTED - 1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
222	50	8	16%

An examination of 50 systematically selected claims files, representing 23% of all claims submitted to the company in Colorado during 1997, showed 8 instances (16% of the sample) wherein the Company failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

**FAILING TO ACKNOWLEDGE RECEIPT OF CLAIMS SUBMITTED TO COMPANY AGENTS:**

In 4 of the 8 reported instances the Company's failed to acknowledge receipt of claims submitted to Company agents. The delays were caused by the respective agent's failure to forward the claim to the Company and the Company's failure to adopt and/or implement a procedure to assure Company agents will promptly notify the Company when the agent receives any communications regarding claims arising under title insurance policies.

The Company's agency contract recognizes the insurance industry custom that knowledge of facts to an agent are imputed to the principle. Therefore, the standard language contained in the Company's agency contract regarding notice of claims provides:

**CLAIMS AND LOSS PROVISIONS**

Each of the parties agrees to notify the other immediately in writing of any claim or loss under any policy issued hereunder, howsoever such claim may come to its attention, which may result in the assertion of a claim or loss under any such policy, or the commencement of any litigation which might result in any such claim or loss. . . . Such notice shall be as prompt as possible. . .

First American Title Insurance Company, UNDERWRITING AGREEMENT, § 4. Clause 4.1, Claims and Loss Provisions at page 7 (ed. 1997).

**FAILING TO ACKNOWLEDGE OR ACT PROMPTLY UPON COMMUNICATIONS WITH RESPECT TO CLAIMS:**

In another 4 of the 8 reported instances the Company received claims related correspondence from insureds and failed to either act upon and/or acknowledge those communications.

**Recommendation #10:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(II), C.R.S. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed its procedures relating to the handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all communications with respect to claims arising under insurance policies will be acknowledged and acted upon in accordance with statutory requirements.

Furthermore, the Company should be required to demonstrate that it has adopted and implemented procedures to assure enforcement and implementation of the provision of the Company's agency contract which requires Company agents to provide the Company with immediate notice of any claim or any verbal or written communication by an insured or claimant that reasonably apprises the Company of the facts of a claim.

<b>Issue K: Failure to produce and/ or maintain adequate claim records for market conduct review.</b>
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Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

**B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES**

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.
3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.

The following sample of claims submitted against the Company during 1997 demonstrated that, in some instances, the Company failed to adequately document files so as to comply with the specific requirements of the regulation.

**TITLE CLAIMS SUBMITTED - 1997**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
222	50	7	14%

An examination of 50 systematically selected claims files, representing 23% of all claims submitted to the company during 1997, showed 7 instances (14% of the sample) wherein the Company failed to adequately document claim files sufficient to allow the examiners to determine compliance with Colorado law.

Moreover, in 5 of the 7 instances the adjuster failed to document the claim file to clearly show the disposition of the claim.

In 1 of the 7 reported instances the adjuster failed to adequately document the file to allow the examiners to determine the inception date of the claim.

In 1 of the 7 reported instances the adjuster failed to adequately document the file to allow the examiners to determine both the inception date and disposition of the claim.

**Recommendation #11:**

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(III), C.R.S., and 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance in the context of claims handling. Particular areas of concern should include, but should not be limited to, adjuster notes, telephone logs and retention of all correspondence related to the respective claim, including correspondence directed to the Company's agents regarding any inquiry or claim.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its claims manual and implemented procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the requirements of the law.

**PERTINENT FACTUAL FINDINGS**

Relating to

FINANCIAL REPORTING

<b>Issue L: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.</b>
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Section 10-4-404, C.R.S. provides in part:

(1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VI)(K)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.

Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

3 CCR 702-3(3-5-1) requires all title insurers authorized to provide coverage in Colorado to annually file a "Colorado Uniform Financial Reporting Plan" in a format described and appended to the regulation as "Attachment A". The regulation requires all title agents licensed in Colorado to annually file a "Colorado Agent's Income and Expense Report" described and appended to the regulation as "Attachment B".

In addition, the regulation requires all title insurers to file sufficient financial data and, upon request, statistical data to justify the title insurers rates and otherwise assure the rates used by

the Company comply with the requirements of §10-4-403 et. Seq., C.R.S., and are not excessive, inadequate, or unfairly discriminatory.

A review of the Company's 1997 financial statement and related documents and filings demonstrated that the Company failed to file a Colorado Uniform Financial Reporting Plan (3 CCR 702-3 (3-5-1) attachment A) as required by the regulation. In addition, the Company failed to file sufficient financial data to allow the Division to determine whether rates used by the company were excessive, inadequate, or unfairly discriminatory.

Based on the above, the examiners requested representatives of the Colorado Division of Insurance review the Company's 1997 financial statement and related filings to verify the above. That review demonstrated that the Company did not file the requisite Colorado specific report and/or financial data.

**Recommendation #12:**

Within 30 days, the Company should demonstrate why it should not be considered in violation of the financial data filing requirements established under 3 CCR 702-3 (3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its annual filing procedures so that those procedures anticipate filing of the Colorado Uniform Financial Reporting Plan (Schedule A). The Company should also be required to provide written assurances that it will annually file sufficient financial data to allow the Commissioner to determine whether the insurers rates are inadequate, excessive, or unfairly discriminatory and otherwise assure future compliance with Colorado financial reporting and filing laws.



<b>Issue M: Failure to adopt and/or implement an anti-fraud plan.</b>
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Sections 10-1-127(6)(a) and (c) provide in pertinent parts:

- (a) On and after January 1, 1997, every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan. . .
- (c) Every licensed insurance company doing business in this state shall include as part of its annual report as required in section 10-3-109 a summary of its anti-fraud efforts as described in paragraph (a) of this subsection (6).

A review of all material provided by the Company demonstrated that the Company did not have an anti-fraud plan which complied with the statutes cited above. Furthermore, a review of the Company's annual statement demonstrated that, in 1997, the Company failed to include the requisite summary of the Company's anti-fraud plan with the Company's annual statement.

**Recommendation #13:**

The Company should be required to provide documentation demonstrating why the Company should not be considered in violation of §§ 10-1-127(6)(a) and (c), C.R.S. In the event the Company is unable to provide such documentation, the Company should be required to provide evidence demonstrating that the Company has adopted and implemented an anti fraud plan in compliance with the statute cited above.

## **SUMMARY OF RECOMMENDATIONS**

### **FIRST AMERICAN TITLE INSURANCE COMPANY**

<b>RECOMMENDATION NUMBER</b>	<b>PAGE NUMBER</b>	<b>TOPIC</b>
1	12	<b>Issue A:</b> Accepting title risks from producers without making or obtaining the requisite producer appointment.
2	16	<b>Issue B:</b> Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of exceptions or exclusions to coverage related to unfilled mechanics or materialman's liens in compliance with Colorado law and Company underwriting procedures.
3	18	<b>Issue C:</b> Misrepresenting the benefits, advantages, conditions and/or terms of title insurance policies through omission of applicable endorsements.
4	19	<b>Issue D:</b> Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.
5	28	<b>Issue E:</b> Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify title insurance premium rates.
6	32	<b>Issue F:</b> Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.
7	35	<b>Issue G:</b> Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.
8	41	<b>Issue H:</b> Using closing and settlement service fees and charges not on file with the Colorado Division of Insurance and/or misapplication of filed schedule of closing and settlement services fees and charges.

## **SUMMARY OF RECOMMENDATIONS**

### **FIRST AMERICAN TITLE INSURANCE COMPANY**

<b>RECOMMENDATION NUMBER</b>	<b>PAGE NUMBER</b>	<b>TOPIC</b>
9	47	<b>Issue I:</b> Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.
10	49	<b>Issue J:</b> Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
11	51	<b>Issue K:</b> Failure to produce and/ or maintain adequate claim records for market conduct review.
12	54	<b>Issue L:</b> Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.
13	55	<b>Issue M:</b> Failure to adopt and/or implement an anti-fraud plan.

## **EXAMINATION REPORT SUBMISSION**

Independent Market Conduct Examiners  
Duane G. Rogers, Esq.,  
&  
J. Reuben Hamlin, Esq.,  
participated in this examination and in the preparation of this report.